THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.14413 of 2007

Date:23 .08.2007

Between:

Managing Committee of Masjid and Darga Hazrath Abdul Nabi Shah.

....Petitioner

And

The Chief Executive Officer.

....Respondent

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.14413 of 2007

ORDER:

A Wakf, by name Masjid and Darga Hazrath Abdul Nabi Shah, at Hanamkonda, did not have Muthawalli in the year 2005. The respondent appointed a committee, comprising of 11 members, through its proceedings, dated 06.07.2005, to be in force for a period of two years. Since complaints were received as regards the functioning of the committee, the respondent issued a show cause notice, dated 27.05.2006 and ultimately, superseded the committee vide orders, dated 08.09.2006. In its place, the

petitioner-committee was appointed on 09.09.2006, for a period of three years. Shortly thereafter, the respondent appointed one Mr. Omer Ali Shah as Muthawalli for the said Wakf. Consequent thereto, the respondent dissolved the petitioner-committee, much before the expiry of its term.

The petitioner filed W.P.No.23561 of 2006 challenging its dissolution. The writ petition was allowed on 19.01.2007, on the ground that the petitioner was not put on notice. However, it was directed that it shall be open to the respondent to issue notice to the petitioner and take further steps.

The respondent issued a show cause notice, dated 28.03.2007, requiring the petitioner to explain as to why it shall not be superseded. The petitioner made a representation, dated 03.05.2007, to the respondent with a request to furnish certain documents. Thereafter, the respondent terminated the petitioner-committee, through its proceedings, dated 25.05.2007, and the same are challenged in this writ petition.

Sri B.V.S. Sivaram Prasad, learned counsel for the petitioner submits that it was open to the respondent to terminate the petitioner-committee, only when any acts of

misconduct are noticed and proved, and there is absolutely no basis for the impugned proceedings. He further contends that the Chief Executive Officer, respondent herein, has no authority or competence to terminate the petitioner-committee. It is also urged that the petitioner was not given adequate opportunity to submit its explanation and the impugned proceedings are violative of principles natural justice.

Learned Standing Counsel for the respondent produced the record at the stage of admission. He submits that a committee can be appointed or continued for a Wakf, only when there is no Muthawalli; and once a Muthawalli is appointed, the committee has to give way. He further contends that the Special Officer has gone on long leave and the Chief Executive Officer is holding the charge of that post. According to him, though the impugned proceedings are issued in the name of the Chief Executive Officer, he had the authority of the Special Officer.

In the earlier round of litigation initiated by the petitioner, this Court held that the order of termination of the petitioner-committee is illegal, inasmuch as it was not preceded by a show cause notice. The appointment of

the Muthawalli remained untouched. It hardly needs any emphasis that the necessity to appoint or continue a committee for a Wakf arises, only when no Muthawalli is appointed or functioning for it. With the appointment of one Mr Omar Ali Shah as Muthawalli, the necessity had arisen to discontinue the petitioner-committee. All the same, it was entitled to be issued notice.

It is not in dispute that the petitioner was issued a show cause notice, dated 28.03.2007. On receipt of the same, instead of submitting its explanation, the petitioner addressed a letter, dated 03.05.2007, requiring the respondent to furnish the copies of seven proceedings. It is surprising to note that the proceedings included, the order of appointment of the petitioner itself and the order passed by this Court in W.P.No.23561 of 2006. A request was also made to furnish the proceedings, that related to the appointment of the committee, before the petitioner was appointed, as well as its termination. Having waited for the stipulated time, the respondent issued the order of termination. It is not as if any allegations as to misconduct or mismanagement were made against the petitioner. Therefore, it cannot be said that there was any violation of principles of natural justice.

It is true that the impugned order was issued in the name of the Chief Executive Officer. There is no Wakf Board constituted, as provided for under the Wakf Act. A Special Officer is managing the affairs of the Wakf. However, he has gone on leave and the Chief Executive Officer is holding the charge. The result is that the Chief Executive Officer is discharging the functions of his office as well as that of the Special Officer. In fact, the appointment of the petitioner came to be made under similar circumstances. In that view of the matter, the impugned proceedings do not suffer from any illegality.

For the foregoing reasons, the writ petition is dismissed. There shall be no order as to costs.

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L.NARASIMHA REDDY, J.

Date: 23.08.2007
JSU